

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ALAN L. MILLS

Claimant

VS.

STATE OF KANSAS

Respondent

AND

STATE SELF INSURANCE FUND

Insurance Carrier

DOCKET NO. 173,974

ORDER

ON the 22nd day of February, 1994, the application of the respondent and its insurance carrier for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Shannon S. Krysl, dated January 13, 1994, came on before the Appeals Board for oral argument by telephone conference.

APPEARANCES

The claimant appeared by and through his attorney, Orvel Mason of Arkansas City, Kansas. The respondent and its insurance carrier appeared by and through their attorney, Billy E. Newman of Topeka, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board consists of the documents filed of record with the Division of Workers Compensation in this docketed manner, including the transcript of the Preliminary Hearing before Administrative Law Judge Shannon S. Krysl dated January 13, 1994.

ISSUES

- (1) Whether the Administrative Law Judge exceeded her jurisdiction in ordering payment of temporary total disability benefits "until claimant is employed".
- (2) Whether the Administrative Law Judge exceeded her jurisdiction in ordering an individual, who is not an approved vocational rehabilitation counselor under K.A.R. 51-24-3, to assume a vocational rehabilitation vendor's role in the case.
- (3) Whether the Administrative Law Judge exceeded her jurisdiction in removing the current vocational rehabilitation vendor absent a request by either a party.
- (4) Whether the Administrative Law Judge exceeded her jurisdiction by ordering a referral "to a vocational rehabilitation vendor for development of an alternative plan for retraining in the medical field".
- (5) Whether this appeal was timely filed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board will first address the issue of whether this appeal was timely filed as its determination of that issue is dispositive of all issues in this matter. Based upon the evidence presented and for purposes of this appeal from a preliminary order, the Appeals Board makes the following findings:

- (1) The order which forms the basis of this appeal was entered on January 13, 1994, by Administrative Law Judge Shannon S. Krysl.
- (2) On January 26, 1994, an application for review by the Appeals Board was received and filed of record with the Division of Workers Compensation.

K.S.A. 44-551(b)(1) provides in pertinent part:

"All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge shall be subject to review by the Board upon written request of any interested party within ten days"

The above language is an amendment to K.S.A. 1992 Supp. 44-551 which pertained to the previous procedure of review by the director. This statute, pertaining to the time period within which appeals to the Appeals Board from administrative law judge orders, is to be read in conjunction with the director's rule contained in K.A.R. 51-18-2 which provides:

"The effective date of the administrative law judge's acts, findings, awards, decisions, rulings, or modifications, for review purposes, shall be the day following the date noted thereon by the administrative law judge.

Application for review shall only be considered as timely filed if received in the central office or one of the district offices of the director on or before the tenth day after the effective date of the act of an administrative law judge."

The subject of time computation for purposes of the Workers Compensation Act is further explained by director's rule, K.A.R. 51-17-1 which provides as follows:

"The time within which an act is to be done shall be computed by excluding the first day and including the last; if the last day be a Saturday or Sunday or a statutory holiday, it is to be excluded."

The authority by which the director promulgates rules and regulations is contained within K.S.A. 44-573 which provides, et al:

"The director of workers compensation may adopt and promulgate such rules and regulations as the director deems necessary for the purposes of administering and enforcing the provisions of the workers compensation act."

Accordingly, the respondent's application for review was due to be filed on or before January 24, 1994. As it was not filed until two days later on January 26, 1994, it was not timely filed and therefore is of no force or effect.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the application for review by the Appeals Board filed by the respondent in this matter on January 26, 1994, should be and is hereby dismissed. The Order of Administrative Law Judge Shannon S. Krysl dated January 13, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Orvel Mason, Home Natl. Bank Bldg., Suite 220, Arkansas City, KS 67005
Billy E. Newman, LSOB #552, 900 SW Jackson, Topeka, KS 66612
Shannon S. Krysl, Administrative Law Judge

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George Gomez, Director